

August 19, 2016

**VIA FIRST CLASS MAIL**

Nicoletta DiForte  
Deputy Director for Enforcement  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region II  
290 Broadway  
New York, New York 10007-1866

**Re: Diamond Alkali Superfund Site**

Dear Ms. DiForte:

This firm represents Hoffmann-LaRoche Inc. ("Roche"). Roche appreciates the letter of March 31, 2016 from the United States Environmental Protection Agency ("EPA"), acknowledging that "some of the parties that have been identified as PRPs under CERCLA...may be liable for a cash out settlement". Insomuch as the letter requested a response from such parties, Roche wishes to seek such a de minimis settlement and submits this response under FRE 408, as an offer of compromise.

Since 1928, Roche has operated a facility in Nutley, N.J. Over the years it acquired adjacent properties. It had operated on the site as a pharmaceutical manufacturer continuously from that date until recently. At present, Roche is complying with the New Jersey Industrial Site Remediation Act, N.J.S.A. 13:1K-6 et seq. ("ISRA"). Roche was not involved in the manufacture (or use as raw products) of any congener of dioxin or poly-chlorinated biphenyls ("PCBs") at the Nutley facility. These chemicals have been identified as major contaminants in the Lower Passaic River.

Moreover, Roche has conducted a remedial investigation under ISRA of St. Paul's Brook that flows through the Roche property and eventually empties into the Third River about 1500 feet from Roche's Nutley facility. The conclusion of the investigation is that there is no evidence of any Roche related impacts from direct or indirect discharges and no stressed or stained impacts were observed to St. Paul's surface water. The type and concentrations of constituents in the sediments and next to and immediately downstream of the Roche Nutley facility are similar to or less than such constituents in sediment and surface water immediately upstream of the facility.

St. Paul's is a tributary to the Third River. The Third River at the juncture with St. Paul's is about ½ mile from the Passaic River. The Third River enters the Passaic River at approximately River Mile 10. The three samples taken in the Third River in the last sampling (2013), showed no 2,3,7,8 dioxin in the most upstream sample and a slight trace amount of

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PCBs. However, as the samples proceed down the Third River toward the Passaic River they increase dramatically indicating that the source of the contaminants is from the Passaic River and tidal action not from the uplands surrounding the Third River as the source.

In 1924, Passaic Valley Sewerage Authority<sup>1</sup> began accepting sewage and waste waters. Roche's facility was on line in 1928 and has been a permittee since it began discharging waste waters. At times, Roche experienced permit exceedances but those were resolved. In general, the materials discharged were volatile organic substances, which do not appear to be contaminants of concern in the Lower Passaic river sediments.

As you may be aware, New Jersey Department of Environmental Protection filed suit against Tierra Solutions, Inc. ("Tierra") and Maxus Energy Corporation ("Maxus") for the State's past costs. Those parties filed a third party complaint against nearly 200 parties. Roche was one of those parties. The third party plaintiffs' claims alleged that, in addition to Roche's Nutley facility, two other sites associated with Roche contributed to the Lower Passaic: one in Belleville and the other the Bayonne Barrel and Drum site in Newark, New Jersey, which is a Superfund site.

As for the Belleville property, Roche acquired it from Andrew Jergens in or about 1975. From 1975 until 1987, this site was used for offices and warehousing. Roche did not use the site for manufacturing. In 1987, the property was transferred to Roche Diagnostics Services, Inc. (RDS). RDS is engaged in selling the property. At present RDS is completing its ISRA compliance. During the entire 40 years since Roche acquired the property there have been no exterior spills or discharges that reached the Second River. The only known discharge was during the ownership of Jergens which related to a boiler incident and spill. There is no known impact to groundwater or to the Second River from such boiler blow down. Prior to that, the property was owned by the Township of Belleville. Yet, this was the only basis of the Tierra and Maxus third party claim in the State Action against Roche for the Belleville site.

The third site implicated by Tierra and Maxus involved a drum recycling facility in Newark called the Bayonne, Barrel and Drum ("BB&D") facility. Roche did send empty drums from its Nutley facility for reconditioning and recycling in the early 1980s. Roche was named a potentially responsible party by EPA in the BB&D Superfund matter and has been a cooperating party since the formation of the group. However, Roche's barrels were empty. The drums had been used for transporting either volatile organic products or their wastes. However, they were sent empty to the BB&D site. These empty drums were shipped to BB&D to complete the requisite RCRA drum cleaning requirements. To restate the above comment, Roche did not use PCBs as raw materials in its manufacturing. The main contaminant on the BB&D site was PCBs, which were entombed.

The above three sites are discussed as they were alleged by Tierra and Maxus as possibly contributing to the contamination of the Passaic River. In discovery no further evidence was produced by Tierra and Maxus

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<sup>1</sup> The Passaic Valley Sewerage Authority is now known as the Passaic Valley Sewerage Commission (hereinafter "PVSC")

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When Roche received EPA's original PRP notice for the Diamond Alkali site on the Passaic River in 2006, Roche had two choices: to attempt to cooperate with the EPA by joining the parties who signed the Administrative Consent Order ("ACO") on the remedial investigation and feasibility study or to withhold cooperation and take no action on the general notice letter. There simply was, and there remains, no process to seek to "delist" a PRP from EPA's list. Roche believes that cooperation in finding solutions to environmental problems is a responsible corporate practice. As a result, Roche elected to sign the ACO with EPA to conduct the remedial investigation and feasibility study as one of the cooperating group members.

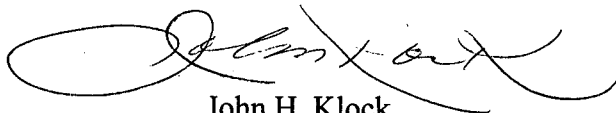
For the first time, EPA's March 31, 2016 letter presents Roche with the opportunity to explain why it is not a PRP and to seek a de minimis or de micromis cash out settlement.

Typically, the Comprehensive Environmental, Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9607 is read to impose liability on anyone who generates hazardous substances, arranges for their disposal, transports hazardous materials or accepts hazardous waste for disposal at a facility. 42 U.S.C. § 9607(a). The de minimis part of that section is subsection (g), which states that EPA "shall as promptly as possible reach a final settlement with a potentially responsible party" meeting the criteria. Roche believes it meets such criteria as well as the de micromis exception in subsection(o) which in essence states that there is no liability if a third party causes by act or omission a release where the named party has exercised due care and taken all reasonable precaution against such acts. Any discharges by PVSC, for example, would be such a third party. As noted above, Roche's waste water to the PVSC contained permitted volatile organic compounds. However, the nature of the contaminants of concern in the Lower Passaic River are not volatile organic compounds but rather semi-volatile compounds, dioxins or PCBs.

De minimis settlements are initiated by the EPA. Thus it is the invitation presented in the March 31 letter to usher in such a process at this time that Roche is willing to accept and to seek such a resolution with EPA.

In closing, as outlined above, Roche believes it meets the criteria of 42 U.S.C. §9607(g) and indeed accepts EPA's offer to negotiate a cash out settlement.

Very truly yours,



John H. Klock  
Director

JHK/ia

cc: MaryAlice Barrett